



POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings : X

- against - : FINAL  
Police Officer Arnaldo Santana : ORDER  
Tax Registry No. 945397 : OF  
Police Service Area 9/Viper 14 : DISMISSAL

Police Officer Arnaldo Santana, Tax Registry No. 945397, Shield No. 23981, Social Security No. ending in [REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 2010-3367 as set forth on form P.D. 468-121, dated August 1, 2011, and after a review of the entire record, has been found Guilty of Specification Nos. 1, 2, 3, 5 and 6 and Not Guilty of Specification No. 4 in Disciplinary Case No. 2010-3367.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Arnaldo Santana from the Police Service of the City of New York.

A handwritten signature in black ink, appearing to read "Raymond W. Kelly".

RAYMOND W. KELLY  
POLICE COMMISSIONER

EFFECTIVE: On February 25, 2013 at 0001 hrs.



## POLICE DEPARTMENT

September 19, 2012

In the Matter of the Charges and Specifications : Case No. 2010-3367

- against -

Police Officer Arnaldo Santana

Tax Registry No. 945397

Police Service Area 9/Viper 14

At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable Martin G. Karopkin  
Deputy Commissioner - Trials

## APPEARANCE:

For the Department: Pamela Naples, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, New York 10038

For the Respondent: Stuart London, Esq.  
111 John Street – Suite 640  
New York, New York 10038

To:

HONORABLE RAYMOND W. KELLY  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before me on February 22, 2012, June 6, 2012, July 5, 2012, and July 26, 2012, charged with the following:

1. Said Police Officer Arnaldo Santana, while off-duty and assigned to the 43<sup>rd</sup> Precinct, on or about February 17, 2010, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did use a wrongfully obtained credit card to obtain a benefit, in that said Police Officer did make an unauthorized purchase at Target Store, in Bronx County.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT GENERAL REGULATIONS

2. Said Police Officer Arnaldo Santana, while off-duty and assigned to the 43<sup>rd</sup> Precinct, on or about February 17, 2010, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did improperly sign for and authorize a credit card purchase while using a wrongfully obtained credit card.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT PROHIBITED CONDUCT GENERAL REGULATIONS

3. Said Police Officer Arnaldo Santana, while off-duty and assigned to the 43<sup>rd</sup> Precinct on or about February 17, 2010, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did wrongfully obtain property valued at less than one thousand dollars (\$1,000.00) using a wrongfully obtained credit card.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT PROHIBITED CONDUCT GENERAL REGULATIONS

4. Said Police Officer Arnaldo Santana, while off-duty and assigned to the 43<sup>rd</sup> Precinct, on or about February 17, 2010, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer, upon receiving information that the Department was aware of said Police Officer's improper use of and purchase of property, with a wrongfully obtained credit card, did move said property from one location to another in order to conceal its whereabouts or prevent its recovery.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT – PROHIBITED CONDUCT GENERAL REGULATIONS

5. Said Police Officer Arnaldo Santana, while off-duty and assigned to the 43<sup>rd</sup> Precinct, on or about February 17, 2010, did knowingly associate with a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities.

P.G. 203-10, Page 1, Paragraph 2 - PUBLIC CONTACT – PROHIBITED CONDUCT GENERAL REGULATIONS

6. Said Police Officer Arnaldo Santana, while off-duty and assigned to the 43<sup>rd</sup> Precinct, on or about February 10, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer, during his official Department interview, did provide misleading statements regarding his use and knowledge of a wrongfully obtained credit card.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT PROHIBITED CONDUCT GENERAL REGULATIONS

The Department was represented by Pamela Naples, Esq., Department Advocate's Office, and Respondent was represented by Stuart London, Esq.

Respondent through his counsel entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification Nos. 1,2,3,5 and 6. He is found Not Guilty of Specification No. 4.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Officer Edward Cantaloupe, Police Officer Grey Santana and Sergeant Ernesto Cruz.

Police Officer Edward Cantaloupe

Cantaloupe has been a member of the Department for nine years. He was assigned to the 44 Precinct after his graduation from the Police Academy and has been assigned there since that time. He acknowledged that he was familiar with Respondent because Respondent had worked in the 44 Precinct for a period of time.

On February 17, 2010, Cantaloupe was assigned to patrol the Gateway Center Mall and was present in the security office of the Target store in the mall at about 9:30 p.m. when he was informed by one of the security guards, Andre Ramirez, that there was a group of men in the electronics section that Ramirez suspected were possibly engaged in credit card fraud based upon the numerous times that the men swiped their credit cards and signed for the purchases in addition to the quantity of the items purchased. While viewing the store surveillance video [Department's Exhibit (DX) 2] as it happened, Cantaloupe recognized Respondent. Cantaloupe described that he saw on the video "one of the males hand [Respondent] one of the credit cards and then [Respondent] selected some items and used the credit card to purchase those items." Cantaloupe indicated that he recognized Respondent's face in the video, and stated, "I just knew that he was an officer that I knew." According to Cantaloupe, there is a time in the video when Respondent's shield and identification card can be seen.

While exiting the store with another male, Respondent encountered Cantaloupe. Respondent and Cantaloupe exchanged greetings, shook hands, and spoke briefly. Their conversation helped Cantaloupe confirm Respondent's identity. Cantaloupe further stated that "after I observed surveillance video and what I believed to have been

corruption, I made the proper notifications. I notified my lieutenant, who then notified Internal Affairs."

Cantaloupe testified under cross-examination that he had no knowledge as to whether any of the credit cards used by the men were stolen. He acknowledged that Respondent made no attempt to either hide from, or avoid him when their paths crossed and they shook hands by the exit. According to Cantaloupe, Respondent neither appeared nervous nor suspicious.

Cantaloupe vaguely recalled that Respondent was exiting the store with another male. Cantaloupe did not recall being introduced to Person A. According to Cantaloupe, Respondent and the other male were exiting the store with two televisions, clothes, and some iPods. Cantaloupe did not recall seeing any DVDs. Cantaloupe clarified that he saw the iPods go into the bag when he watched the surveillance video.

According to Cantaloupe, Respondent could be seen on the surveillance video opening his wallet to remove a card that appeared to be either a credit card or a gift card. Cantaloupe agreed that he could not say with any certainty if the card was a credit card because he could not see any markings on the card to indicate if the card was a Visa, Mastercard, or American Express Card. Cantaloupe could not see any names, or account numbers on the card. Cantaloupe further explained that the male who was with Respondent could be seen swiping numerous cards on the video and it was these repeated swipes that attracted the attention of the security guard. Cantaloupe conceded that Respondent could not be seen in the frame at the time the male was swiping numerous cards, and agreed that he did not even know if Respondent was in the store at the time the male was swiping the numerous cards. Cantaloupe was informed by the security guard

that there was an investigation connected to the cashier who was conducting the transaction. The security guard informed Cantaloupe that the male was seen making credit card purchases in the store a few times before that day. Cantaloupe acknowledged that he did not know if Respondent was present in the store with the male during the prior credit card purchases. It was the first time that Cantaloupe ever saw both Respondent and the male together in the store.

By the time Respondent finally entered into the frame, the other male had already purchased some items. Respondent could be seen receiving a credit card from the other male. Respondent swiped the card to make a purchase and the card appeared to be declined. Respondent then opened his wallet which caused his shield, which was inside of the wallet, to be exposed. Cantaloupe agreed that it was possible that Respondent was retrieving another credit card from the wallet. The other male could then be seen removing the card from Respondent's hand. The other male swiped the card, and the purchase went through for approval. Cantaloupe agreed that Respondent and the other male went back and forth with the pen to determine who was going to sign for the purchase. Respondent was then seen signing for the purchase. Cantaloupe never reviewed a copy of the receipt, and was not certain as to what name Respondent signed on the receipt.

Cantaloupe placed himself in a position outside of the store to observe Respondent, and to determine if he really knew Respondent. Cantaloupe observed Respondent exit the store while pushing a cart. Cantaloupe agreed that Respondent shook his hand and they had a discussion about their current assignments. Cantaloupe

has been assigned to the mall since October 1, 2009, and this was the first time that he had seen Respondent and the other male at the store.

On redirect examination, Cantaloupe agreed that he did not know if Respondent removed his wallet to actually retrieve another credit card, explaining, "he used one card that was passed to him. I can't recall if he pulled out a different card and used it..."

Police Officer Grey Santana

Santana has been a member of the Department for over four years and is currently assigned to the World Trade Center Command. Santana indicated that he knew Respondent because they were in the same gym class in the Police Academy and then upon graduating they were both assigned to the 44 Precinct. Eventually, Santana was transferred to the 41 Precinct and Respondent was transferred to the 43 Precinct. Santana testified that he and Respondent were friends while assigned to the 44 Precinct.

During February of 2010, Santana learned of rumors concerning a police officer named Santana from the 44 Precinct who was in some kind of trouble involving a Target store. Santana knew that he himself was not the subject of the rumors and he called Respondent via telephone and had a short conversation to see what was going on because he knew that Respondent was the other Santana who had worked in the 44 Precinct. During the phone call, Santana informed Respondent of the rumors, and he asked Respondent if everything was okay and if he had heard anything about the rumors. According to Santana, Respondent stated that everything was okay and "mentioned something about going into Target with a friend or cousin and that he bought some basketball equipment, some gym gear."

Santana admitted that he and Respondent spoke once more after the initial telephone call. According to Santana, Respondent told him something about being transferred to Queens. Santana did not recall any discussion concerning Respondent shopping with a friend or cousin during the second telephone call.

On cross-examination, Santana testified that he was not nervous because of the rumors concerning a Santana from the 44 Precinct because he knew that he himself was not the subject of the investigation. Santana explained that he called Respondent because he was curious to see if everything was okay with Respondent since they both worked in the 44 Precinct, and the investigation was rumored to concern a Santana from the 44 Precinct. Santana indicated that he called neither the Internal Affairs Bureau (IAB), nor his integrity control officer (ICO), nor the duty captain after Respondent acknowledged that he was in Target with Person A. There was no penalty imposed on Santana for not notifying IAB. Santana denied being made aware that Respondent returned the items that were purchased at Target based upon their conversation on the telephone. During his official Department interview, Santana stated that he did not exactly remember Respondent saying anything about stolen items; during cross-examination, Santana said no, Respondent did not say anything about stolen items.

Santana testified under examination by the Court that he called Respondent to confirm if the Santana being investigated was in fact Respondent. Santana indicated that Respondent just said that he was in Target, and never actually confirmed that he was the subject of the investigation.

Sergeant Ernesto Cruz

Cruz has been a member of the Department for 19 years. In February of 2010, as an investigator assigned to IAB Group 22, Cruz was tasked with investigating an allegation of credit card fraud that was initially assigned to IAB Group 9, specifically that Respondent was purchasing products at a Target store with fraudulent credit cards. Cruz learned that Cantaloupe was the subject of an official Department interview conducted at the 44 Precinct and that Cantaloupe notified the Department after viewing a video in which Respondent was seen making purchases in the electronics department with another individual who was known to use fraudulent credit cards.

IAB Group 9 provided Cruz with a video (DX 2) and several worksheets. Cruz viewed the video and observed Respondent with an unidentified male Hispanic as they purchased a television and gym clothing. After reviewing the video and worksheets, Cruz conducted canvasses in the vicinity of both the mall and Respondent's home for any discarded boxes of large televisions with the purpose of dusting any such boxes for fingerprints. Both canvasses yielded negative results.

Cruz went to the security department at Target where he was informed by the risk management director that "the cards that were used were fraudulent according to their records." Cruz added that he was provided with a receipt (DX 1) which listed the credit card number, and that credit card number was then matched to the purchases made by Respondent. Cruz testified that IAB Group 2 "did a background search on the card, and the card came back fraudulent." According to Cruz, the credit card that Respondent was seen using was a clone and the true owner of the credit card was a man in Florida. Cruz explained that IAB Group 2 contacted Mastercard, and Mastercard contacted the true

owner. The true owner claimed that he had never been to New York, and that he did not make these purchases. The true owner filed a complaint report with his local police department in Florida. According to the receipt, the items purchased by Respondent consisted of gym clothing, shorts and t-shirts, and a large screen television. Cruz stated that the purchases totaled "somewhere in the neighborhood of \$600 and change."

[The total shown on the receipt (DX 1) is \$672.73.]

During the investigation, Cruz learned that the unidentified male Hispanic who could be seen handing the credit card to Respondent in the surveillance video was

[REDACTED] Person A. Cruz acknowledged that Respondent did sign for the goods that were purchased. Cruz explained that he came to know Person A's identity as a result of surveillance at the Atlantic Terminal Mall in Brooklyn. The investigation there determined that there was a pattern of behavior where fraudulent credit cards were being used at the same location at the Atlantic Terminal Mall, at roughly the same time of day, several days per week. During the surveillance, Cruz observed the previously unidentified male Hispanic (later identified as Person A) walk into the Target store at Atlantic Terminal Mall with another Hispanic male. The two men were apprehended after they were observed making purchases on May 5, 2010. Person A's identity became known after his arrest, and he told Cruz that Respondent was Person A during debriefing (DX 3A, 3B and 3C, compact disc recording, counter readings, and transcript, respectively, of Person A's interview).

Cruz testified that Person A was initially reluctant to agree that Respondent had any knowledge of the credit card scheme when they went shopping on February 17, 2010. Despite his initial reluctance, Person A eventually told Cruz that Respondent had prior

knowledge of the credit card scheme on that day, after he was shown the surveillance video. According to Cruz:

[Person A] told us about an elaborate scam that's going on with him and other people with credit cards, manufacturing them and using them to make purchases, and then reselling the purchases they make.

[Person A] told us that he was working with a man by the name of Person B who ran this operation in Queens County. They manufactured credit cards, false ID's, identifications to go and match the credit cards, and they used it by using skimmers at different locations in Florida and in New York.

Person A explained to us that the officer, the subject officer [Respondent], had prior knowledge of his criminal history, that he had been arrested before, and that he had prior knowledge of his activities in dealing with fraudulent credit cards, and that he knowingly went to the Target department store on February 17<sup>th</sup> to make those purchases.

[Person A] acknowledged, [Person A] said that the subject officer did have prior knowledge, but that that was the only time he had ever done it, and he never did it again.

After debriefing Person A, a search warrant was executed in Queens County. The search warrant resulted in the recovery of products, merchandise, and the machinery used in PersonA's fraudulent credit card operation.

According to Cruz, the next investigative steps taken consisted of a background investigation into Respondent, continued surveillances, and the placing of Respondent on modified assignment. Respondent was the subject of an official Department interview (DX 4A and 4B, transcript and tape recording, respectively, of Respondent's interview), where “[Respondent] stated that he was aware of Person A's criminal background, that he had limited contact with him, they did speak on the phone, and they had agreed to go to Target department store and make purchases.” Cruz further stated that Respondent

went to Target with the intent to purchase gym clothes. During the interview, Respondent denied having any knowledge that the credit card was fraudulent and even stated that he did not look at the credit card. Cruz summarized the interview with Respondent by stating, "I asked [Respondent] if he saw the name on the card, and he said no. I asked [Respondent] if he looked at the card, he said no. We asked [Respondent] if he even glanced at the card, he said no. [Respondent] said he never looked at it." The surveillance video, which depicted Respondent looking at the credit card, was shown to Respondent. Respondent admitted to looking at the credit card several times, but claimed he only looked at the numbers on both the front and back. Respondent continued to deny looking at the name, but did admit that he signed for the purchase.

Cruz further summarized Respondent's statements made during the official Department interview by stating,

...[W]e asked him what did he do with [the actual items purchased with the credit card] he said he received a phone call from another officer telling him that there was rumors in the precinct, and it was common knowledge now that he had been using fraudulent credit cards and made some purchases with it.

[Respondent] said that he took the television and the other clothing, brought it back to [REDACTED] [Person A's] mother's house, left it there, and went out to Brooklyn to meet with [REDACTED] [Person A].

On cross-examination, Cruz agreed that he was not part of IAB Group 9, which was initially assigned to investigate this matter. Cruz affirmed that IAB Group 9's investigation determined that Cantaloupe both recognized and engaged Respondent in friendly conversation right after Respondent exited the Target store on February 17, 2010. Cruz acknowledged that surveillance was conducted from February 17, 2010, to

May 5, 2010, in an effort to locate and arrest Person A for using fraudulent credit cards. Person A was located on May 5, 2010, while using fraudulent credit cards at the Atlantic Terminal Mall in Brooklyn. Cruz agreed that, with the exception of February 17, 2010, at no time during either the surveillance or the investigation was Respondent connected to Person A in the credit card operation. Cruz also agreed that there were neither phone calls nor witnesses that connected Respondent to the credit card operation. Cruz affirmed that Person A, who had a criminal record for selling cocaine, was the only person to connect Respondent to the credit card operation.

Cruz confirmed that Person A was a confidential informant for the police prior to his arrest on May 5, 2010. Cruz confirmed that as a confidential informant, Person A provided information leading to five arrests to work off his case. Cruz also confirmed that Person A was imprisoned for three years for selling cocaine. Person A, whose occupation was to make eyeglass frames and lenses, was arrested with a co-worker on May 5, 2010.

After his arrest, Person A said that he could provide police with information concerning people who print credit cards, print licenses, and possess the machines to print such items. Person A provided the name of a co-worker, Person B, who was involved in the credit card operation. Cruz testified that Person B was arrested and an attempt was made to debrief Person B. Person B refused to speak to the investigators. Cruz agreed that the investigation and surveillance did not reveal any connections between Respondent and either Person B or the individual who was arrested with Person A on May 5, 2010.

[REDACTED]

[REDACTED] Cruz

interviewed Person A on May 6, 2010, and Person A claimed that he never hung out with Respondent. While Cruz initially testified that Person A claimed that Respondent knew that the credit card was fraudulent prior to making the purchases on February 17, 2010, after reviewing the transcript of Person A's interview, Cruz agreed that during the interview, Person A had indicated that Respondent did not know what was going on with the fraudulent credit card until after the fact, and that Person A had stated that Respondent "didn't have any knowledge of this shit." Cruz conceded that Person A could have been implying that Respondent had no knowledge of the credit card fraud when he referred to Respondent as not having "any knowledge of this shit."

Cruz affirmed that Respondent was not present when Person A purchased \$2,000 worth of gift cards. Cruz agreed that Respondent changed his phone number because he did not want to have any communication with Person A. Furthermore, Cruz agreed that after Respondent received a phone call from Santana inquiring if he (Respondent) was the Santana involved with a credit card situation at a Target store, Respondent became fearful and returned the items purchased with the fraudulent credit card to Person A.

Regarding Cruz' initial assertion that Person A stated that Respondent had prior knowledge of the credit card operation, upon review of Person A's interview transcript, Cruz conceded that Person A told him that Respondent had no knowledge of the credit card fraud on February 17, 2010, and that Person A indicated numerous times during the interview that Respondent did not know about the use of a fraudulent credit card on February 17, 2010. Cruz agreed that there came a point in time when Person A changed his tune by indicating that Respondent was, in fact, aware of the credit card operation. Cruz did not know what Person A was trying to do by changing his tune.

Person A was taken to the Bronx County District Attorney's Office so that a controlled phone call could be made to Respondent's mother. The controlled phone call was set up for Person A to ask Respondent's mother to have Respondent call Person A as soon as possible because Person A wanted to talk to him. The purpose of the controlled phone call was to get Respondent to admit that he was aware of the credit card fraud while engaged in conversation with Person A. The controlled phone call was unsuccessful, and Person A was unable to contact Respondent because Respondent would not speak with Person A.

At some point after February 17, 2010, Respondent went to Person A's place of employment. While there, Respondent told Person A that he was mad at him for involving him in whatever he was doing. Person A replied that he would not tell Respondent what he was doing because Respondent is [REDACTED] a cop.

During his official Department interview, Respondent indicated that he gave \$400 to Person A as a down payment on the television and clothing. Cruz admitted that he never checked Respondent's bank records to verify the claim. Respondent claimed that he went to meet Person A at Target because Person A promised him a DVD player, and while at Target, he decided to purchase some gym clothes. Cruz agreed that Respondent candidly admitted to signing the receipt with his own name for the credit card that was used. At the time of his arrest, Person A was in possession of numerous credit cards, and none of those credit cards had Respondent's name on them. Person A indicated that he had seen Respondent at least two times [REDACTED] since his May 5, 2010, arrest. Person A and Respondent did not have any conversation during the reunions.

Cruz's investigation included additional surveillance, speaking with possible perpetrators, checking phone records, and meeting with both the Secret Service and the Bronx District Attorney's Office. Cruz agreed that there was nothing to indicate, other than the interview of Person A, that Respondent had any involvement with the fraudulent credit card operation.

On redirect examination, Cruz testified that Person A was arrested on May 5, 2010, because that was the first time that Person A was present while surveillance was being conducted. Cruz acknowledged that Person A's statements that Respondent was not aware of the credit card operation until after the fact were offered early in the interview. It was only after being shown the surveillance video that Person A claimed that Respondent had knowledge of the credit card operation earlier that day. Cruz indicated that Person A's interview was conducted prior to Person A's meeting with the district attorney. Cruz testified that at the end of the interview, Person A said "that [Respondent] had prior knowledge of the credit cards being fraudulent on February 17, 2010." Cruz clarified that on the day of Person A's arrest, a bunch of credit cards bearing fictitious names were recovered along with matching fictitious identifications.

On recross examination, Cruz affirmed that the answers given by Person A prior to being shown the surveillance video were different than the answers he gave after he saw the video. Cruz could neither recall if a recess was taken to watch the video nor if there was any indication during the recorded interview that a video was being shown.

Upon examination by the Court, Cruz admitted that he did not have a copy of the receipt signed by Respondent. Cruz affirmed that Respondent acknowledged signing the receipt for the purchase.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent graduated from the Police Academy on January 7, 2008, and was assigned to the 44 Precinct where he performed Operation Impact patrol duties. He is currently on modified assignment and assigned to Police Service Area 9, Viper 14, where he has been assigned for the past two-and-a-half years due to this disciplinary case. Prior to working in the 44 Precinct, he was assigned to the 43 Precinct where he performed patrol duties for approximately a year-and-a-half.

Respondent acknowledged that Person A, who is close to 40 years old [REDACTED]

[REDACTED] He stated that Person A's current job has to do with glasses or lenses. Respondent first stated that he was not aware that Person A had a criminal history but he was aware that he had used drugs. Then Respondent acknowledged that he did not know any of the details of Person A's cases but that he was aware that he had been arrested for using drugs. [REDACTED]

[REDACTED] Person A does not reside with Respondent and during 2010, Respondent very rarely saw Person A and when he did it was only once in a while, once in a blue moon, just in passing. Respondent further stated that he would not hang out with Person A, only that he would say "just hi and bye".

On February 17, 2010, Respondent testified, he was scheduled to work a midnight shift, from 2330 hours on February 17 into February 18. He received a phone call from Person A on February 17, wherein Person A told him that he had a DVD player that he

was going to lend him. Respondent further explained that he asked Person A where they were going to meet, being that the Respondent had to work that night. Person A advised him that he was leaving work and that he was going to be in the Bronx because he had to buy something at Target. Respondent then agreed to meet with Person A.

Prior to February 17, Respondent had spoken to Person A about needing a portable DVD player and Person A had told him that he had one in his house that he could lend Respondent. Respondent had advised Person A to let him know when he had the DVD player and he would pick it up. Respondent stated that he believed the phone call he had received from Person A was for him to pick up the DVD player, so he went to meet him at the [Gateway Center Mall] in the Bronx.

Respondent stated that he traveled to the Bronx by himself in a separate car and when he arrived there he was lost, so he called Person A to find his exact location to meet him. Respondent explained that he was meeting Person A at a Target store and when he arrived in the parking lot he could not locate the store. Eventually, he found the Target store and entered it trying to find Person A.

Respondent testified that Person A did not indicate to him the he had or was using stolen credit cards. Respondent stated that he noticed Person A by the electronics section in Target and after saying hello Person A had handed him a \$25 gift card. Respondent stated that he also had a prior phone conversation with Person A about the gift card. After receiving the gift card, Respondent went to the sporting section to select some sports clothing like shorts and tank tops and then he intended to come back and pay for the items. Respondent testified that after obtaining the clothes he was walking towards the register and Person A tapped him on the shoulder and advised him that there was a

television behind the cash register that he wanted to buy. Person A informed him that he was going to give Respondent his credit card so he could purchase the television and clothes on his card. He asked Respondent to just give him the money for the clothes that he was buying because he (Person A) wanted the cash.

When Respondent approached the cash register, he placed his clothes on top of the counter and asked the salesperson to include the television that was behind the counter in the transaction. Respondent stated that he was going to pay for the clothes and television with Person A's credit card. Respondent further stated that he when he initially walked up to the register he had taken out his wallet and proceeded to remove from his pocket his ATM card which he was going to use to purchase the clothing items. He then went to put his ATM card back into the wallet, but he had a lot of stuff in his wallet, so instead he just put the ATM card on top and closed the wallet. As he was talking to the salesperson he put his wallet away, but when the salesperson finished ringing up everything, he proceeded to take out his wallet again and at that point he had Person A's credit card in his right hand so he proceeded to put his ATM card away. Respondent swiped his Person A's credit card and initially it appeared to have gone through so he took the pen and signed his name. But for some reason it had not gone through, and the machine had trouble reading the card, so Respondent had to swipe it again. The second time, the card was not going through at all and that was when Person A came over, took the card, swiped it a couple of times and it went through. Respondent stated that he signed his name instead of having Person A sign his name, because he was in a rush to go to work. He explained that he had been in trouble a couple of times because he was

having trouble getting to the precinct on time. He stated, "so I was rushing a little bit, which is why I looked at my phone also when I was on the register."

Respondent acknowledged that at some point in the video he was looking at the credit card and speaking to the salesperson. He explained that the salesperson needed the security numbers on the card and he was reading the numbers to him. Respondent never read the name on the card to the salesperson. After Person A, who was right next to him, swiped the card, Respondent stated that he threw Person A the pen and he told him to sign his name. Person A then threw the pen back at him and told Respondent to just sign it. Respondent acknowledged that he eventually took the pen and signed his name on it and then he told Person A, "Let's go, because I gotta go." Respondent stated that in addition to his sports clothes he had purchased the television and upon completion of the purchases he attempted to pick up the television and drag it out of the store. At this point Person A advised him that he had a cart which had another television inside of it, which Person A had purchased that day prior to Respondent's arrival. As Respondent was pushing the cart out of the store he saw two officers who were standing on post outside the exit of the store and he engaged them in conversation about a basketball game he had the next day. He did not know the officers by name but he had seen them around before and he further stated that the basketball game he spoke to them about was the reason why he was buying the sports clothes. Respondent acknowledged that Cantaloupe was there and that he had introduced him to Person A.

Respondent stated that he had a conversation with Person A about the televisions by Person A's vehicle and asked Person A if he would be willing to sell him one of the televisions because he needed one for his house and it was a good deal because there was

a sale on the televisions. Person A agreed to sell him one and followed Respondent to his bank so Respondent could take out the money to give him in exchange for the television. Respondent stated that he gave Person A \$400 from his Citibank account (Respondent's Exhibit A, bank statement showing withdrawal of \$400 on February 17, 2010, at 10:39 p.m.). He owed Person A more money, which he agreed to pay Person A when he received his next paycheck. After the transaction, Respondent proceeded to go to work.

Respondent acknowledged that at some point he received a phone call from Santana. Respondent did not remember the exact day he received this phone call but it was on his day off and it was only a few days from when he was at Target with Person A. Santana inquired about some televisions that were purchased in Target with a stolen credit card. Respondent stated that he told him that he did not know what he was talking about. Santana informed him that somebody had approached him thinking that he had purchased some televisions with a stolen credit card from a Target store and there was a video recording. Respondent stated that after he received this phone call, he took everything that was purchased at Target to Person A's mother's house and he left the items there. He explained that he did this because he was concerned and he was not sure what was going on. He did not want anything to do with this and he wanted to "get to the bottom of everything, just take everything out, and figure it out afterwards."

Respondent stated that he tried to contact Person A by phone but he could not reach him, so he had his aunt contact him at his job. Respondent then proceeded to Person A's job location in Brooklyn and advised Person A that he had received a phone call from a officer, a friend of his, telling him that "something could have gone wrong." Respondent told Person A that he did not know if it was their incident or another incident

that the officer was calling him about, but Respondent advised Person A that he dropped off everything at his (Person A's) mother's house and this was the last time he was going to see him, talk to him or have any physical contact until they figured out what was happening. Respondent testified that he was not sure what was going on and he knew that with his job, he tried to do everything the right way. Respondent stated that prior to February 17, 2010, he did not know that he had a stolen credit card nor was he invited to Target by Person A to purchase items with a stolen credit card. Respondent acknowledged that during his official Department interview he answered truthfully and to the best of his knowledge.

Respondent testified that he never got back the \$400 he gave to Person A, nor did Respondent pay him the balance of the money he owed to Person A for the television and clothes. Since that day, he has not spoken to Person A; Respondent ran into him outside of Respondent's mother's house and Respondent yelled at him from across the street and told him not to talk to him and he further told Person A that he was not allowed to talk to him.

On cross-examination, Respondent testified that he has been employed with the Department for four-and-a-half years. Respondent acknowledged that when Person A gave him the credit card, he said he wanted the cash, and that was why Person A wanted him to use the credit card. When asked if he actually knew if this was the correct reason why Person A wanted him to use the card he stated, "That's what he told me." Respondent explained he had stated that it was his guess that Person A wanted the cash during Respondent's official Department interview because he was nervous.

Respondent acknowledged that when he was given the credit card he assumed it was Person A's and he did not think he needed to confirm the fact that it belonged to him. He further acknowledged that despite the problem with the swiping, he still signed his name for the purchase and that he looked at the card after the salesperson asked for some extra set of numbers off of the card. Regarding Respondent's statements at his official Department interview that he had not looked at the card, and then after being confronted with the video, that he had glanced at the card, Respondent stated, "I don't recall if I mentioned it before we saw the video or after. I remember telling them I had to look at the numbers. I told them I did glance at the numbers, but I didn't see the name, and that's what I was referring to." Respondent acknowledged that when looking at a credit card the name is underneath the numbers but he stated, "It's there, but if the card is old, you can't read the name." Respondent testified that he couldn't read the name on the card and he had trouble looking at the numbers. He admitted to looking at the card long enough to recognize this, but again stated, "I just glanced at the numbers." Respondent conceded that he is not familiar with Person A's signature.

Respondent testified that he removed the ATM card that he originally wanted to use to make the purchase from his front pocket, and he removed his wallet from his rear pocket. Respondent explained that he took his wallet and ATM card out so that he could secure the ATM card so that it would not break in his pants. Respondent's shield was visible when he opened his wallet to put his ATM card away. Sometime later, Respondent took out his wallet to try to put his ATM card away. Respondent explained that he had trouble sliding the ATM card into his wallet because he had so many things in his wallet.

Respondent indicated that he was in a rush to get to work because he had problems with being punctual in the past. After leaving Target, Respondent had Person A follow him to an ATM machine so that he could give him the money that he asked for. The ATM machine was located across the street from Respondent's home, and Respondent's home was two minutes from Target. Respondent's residence was approximately 20 minutes from his command. After he went to the bank, Respondent gave Person A \$400 dollars. Although Respondent had agreed to pay Person A the remaining balance for the television, he never did pay off the balance.

After receiving a telephone call from Santana, Respondent became concerned about the details of the phone call, and he knew that he had to sort things out and get to the bottom of things. Respondent immediately reached out to Person A to give back the stuff to him. Respondent took the merchandise from his home [REDACTED] and travelled for approximately five to ten minutes to the residence of Person A's mother [REDACTED]. Respondent then left Manhattan and made his way to Brooklyn to meet Person A's where he worked.

Respondent testified that Person A was not initially present at the cash register during the transaction. However, Person A was present when the transaction went through. Respondent initially took possession of the receipt, and all the bags which contained clothing. Respondent had another bag that Person A handed him in the store which contained the DVD player. Respondent recalled giving the receipt to Person A after that evening. He agreed that it was fair to say that the purpose of meeting Person A was to get the DVD player. Respondent affirmed that even though he had to go to work, he continued to shop after Person A gave him the DVD player.

Although Respondent said that he was not worried after he received a telephone call from Santana, he did feel the need to return the items purchased to Person A. Respondent agreed that the information that he received during the telephone call with Santana was very similar to what had taken place when he was at Target with Person A. Respondent agreed that it is fair to say the he understood what Santana was talking about. Even though Respondent was confused and concerned, his first thought was to remove the purchased items from his house, not to confront Person A. Respondent agreed that he told Person A that he did not want to know anything.

Respondent agreed that there was more than one register in the Target store and that despite the fact that he got the clothing in the athletic department, he made his way back to the electronics section to complete the purchase. Respondent testified that when he was asked to add a television to the transaction and to use Person A's credit card, he asked Person A why. Prior to February 17, 2010, Respondent had minimal contact with Person A that basically amounted to a "hi and bye" relationship. Respondent denied speaking regularly on the phone with Person A. Respondent was 34 years of age, and he estimated that Person A was in his forties, with an age difference of about eight to ten years.

#### FINDINGS AND ANALYSIS

Specification Nos. 1, 2 and 3 deals with the issue of whether Respondent improperly used a credit card to make a purchase at a Target store on February 17, 2010. A number of critical facts here are not in issue. Respondent was at the Target store with [REDACTED] Person A. He purchased some athletic clothing and a flat screen television.

He made the purchase using a credit card he had received from Person A. He signed for the purchase. The credit card was fraudulent and Person A, who had a criminal history, was involved with others in the production and use of fraudulent credit cards using identification and numbers that were improperly obtained.

Respondent's defense is that he did not know that he was using a fraudulent credit card. His testimony was that he met Person A at the Target store because Person A was going to give him a DVD player that he had and was no longer using. The Target store was simply a meeting place for the transfer to take place. He claims that upon arrival at the Target store he received the DVD player in a bag from Person A. He then decided to go shopping in the Target store for athletic clothing.

Surveillance video from the Target store that was admitted into evidence came from a camera that was mounted in the ceiling in the vicinity of the cashier in the electronics section. The camera operator was able to swivel the camera to cover nearby areas of the store and to zoom. The video that resulted initially focused on Person A. During the purchase of the television and clothing in question the camera mostly focuses on Respondent.

At the beginning of the video, Respondent can be seen receiving what appears to be a credit card from Person A while they are in an aisle near the cashier. Respondent testified that this was a gift card. Person A can then be seen going to the cashier in the area near the electronics section where he remained until Respondent returned. Respondent can be seen walking away.

During the ensuing ten-minute period, the camera covers the area around the cashier in the electronics section. Person A hangs around the area talking on the phone (he has a device in his ear) and making several credit card purchases.

Respondent's narrative is that after receiving the gift card he went to buy some athletic clothing at the store. About ten minutes later he returned to the cashier near the electronic section with the clothes. Respondent said at some point Person A asked him to charge a flat screen television along with his clothes. All the items, Respondent claimed, were to be placed on Person A's credit card. He, in turn, was going to give cash to Person A for the clothes.

On the video, Respondent can be seen returning to the electronics section where he met Person A approached him as he neared the cashier and they went off to the side together. There was some conversation between them. Although it is not clear on the video, it is possible that this is the point in time, as Respondent claimed, that he received the credit card. After that, Person A, who seemed to be talking on a cell phone, walked off away from the cashier while Respondent went to the cashier with his clothing.

On the video, Respondent is then seen putting the athletic clothing on the counter. The clerk proceeded to put the clothing into bags which took several minutes. During that time, Respondent could be seen fidgeting; putting his hand in his pocket and then removing his wallet. He opened the wallet and his Department shield was clearly visible. He removed the card either from the wallet or his pocket. Respondent could then be seen swiping the card in the credit card terminal. He then took the pen attached to the credit card terminal and appeared to be getting ready to sign when he put the pen on the counter near Person A who, at this point, was right next to him. Respondent then appeared to be

putting the card in his wallet, during which time his shield is again clearly visible. Person A, in the meantime, tossed the pen back on the counter in Respondent's direction. Respondent then picked up the pen and, without hesitation, signed on the credit card machine. He then continued to attempt to put the card into one of slots in his wallet.

Respondent stopped putting the card away and appears to read something off of the card. Respondent testified that the cashier asked him for the security code on the card and this appears to be what happened at that point in time. He then appears to put the card in the wallet and the wallet in his pocket while the cashier entered something in his machine.

The cashier can be seen saying something and Respondent took the card back out and swiped it again. Person A then took the card from Respondent's hand and swiped it two times. Person A then took the pen and appears to check a box (to select an option on the credit card terminal) and then dropped the pen on the counter. The cashier completed the transaction and gave the receipt to Respondent. It appears that Person A kept the card at this point.

Respondent explains that he signed what he believed was Person A's credit card because he was in a hurry and had a lateness problem at work. Respondent's description of the incident is as follows:

He swipes the card. He was right next to me so I actually threw him the pen. I said, here sign, because he was right next to me. I gave him the pen so he can sign. He just threw it back at me and said "just sign it." Eventually I took the pen and I signed my name on it and said, let's go because I gotta go.

As noted on the video, it is clear that Respondent did not throw the pen at Person A but put it near him. There is no indication on the video that there was any discussion between Respondent and Person A at that time and when Person A tossed the pen back toward him. Respondent, who by then had put the card back in his wallet and the wallet in his pocket, simply picked the pen up and signed the credit card terminal.

The only thing that can be said about Respondent's version of what occurred is that it is absurd. There are too many reasonable questions that are not answered by Respondent's so called explanation: Why would he be in possession of a card that was not his and why would he present that card to the cashier as though it were his if the owner of the card was right next to him? Why would he swipe the card if the owner, Person A, was right there? Why would he put the card into his wallet and into his pocket if it were Person A's card? Most significantly, why would he sign for the purchase on what he claims he believed was Person A's credit card?

The only reasonable answer is that he and Person A planned for him to use this fraudulent card as though it were his. To be sure, Respondent may have had a moment of hesitation when he passed the pen to Person A, but the video reflects that he then took the pen and unhesitatingly signed for the purchase.

If, as Respondent claimed, Person A refused to sign for the purchases on this card, there is no logical reason why Respondent should have signed it. If the scenario he presented were true, he had several very reasonable options at that time. He could have insisted that Person A sign his "own" card. After all, Respondent claimed that the reason these purchases were being made on "Person A's card" was so that he could essentially do Person A a favor by providing him with cash for the purchase of the athletic clothing.

If

his story were true, he could have simply said to Person A that he could either sign for the purchase or he would pay for the athletic clothing on his own card and Person A would not be owed any cash.

It should be noted that, during his testimony, Respondent made much about a claim that he had had his ATM card in his hand because he had originally planned on making the purchase with that card. If his story were true he could easily have the television taken off the purchase and paid for his clothing on that card and let Person A deal with the television. Or, he simply could have refused to sign the card and let the whole purchase be cancelled if Person A refused to sign. There is no logical reason why neither of these options was pursued and the only reasonable explanation for his signing is that it was part of the plan for using the fraudulent credit card.

There are other problems with Respondent's story. Respondent testified that the decision for him to purchase the television first occurred when he got to Person A's car. It is not clear why Person A would have bought more televisions than he needed so that he would be ready, willing and able to sell one to Respondent without any prearrangement. Additionally, this part of Respondent's story conflicts with his claim that he signed for the purchase because he was in a hurry.

As noted previously, there is really no indication on the video that Respondent was in a hurry. In any event, being in a hurry is a poor excuse for signing someone else's credit card purchase. But, further evidence that Respondent was not really in a hurry is found in the fact that this transaction created the need for a stop at his home to drop off the television and another stop at the bank to get money to pay for the television.

This part of the story also conflicts with the available evidence from the video.

It appears from the video that the television that was purchased on the fraudulent credit card was purchased expressly for Respondent. Respondent clearly took possession of the television after the purchase along with the numerous bags of clothing he had just purchased. He can be seen to struggling with all these purchases as he started to drag the television out of the store himself. There was no reason for him to do that if this were Person A's television. It was at that point that Person A showed him the shopping cart which already had a television Person A had purchased and the two televisions were then wheeled out of the store.

The total purchase came to \$672.73. There is no question that Respondent stopped at the bank and took out \$400, as Respondent's bank records show. Respondent said he gave \$400 to Person A and was going to pay him the rest at some future time, but we have only Respondent's word on this. Whether Respondent gave any or all of the \$400 to Person A is unknown but, in any event, it is irrelevant because there was clearly no intention to pay either the store or the credit card company for the purchases.

Respondent has also raised another defense. He claims that when Person A was arrested and debriefed, he (Person A) told Department investigators that Respondent was not involved. An audio recording and transcript of the interview with Person A is in evidence (DX 3A & C). Person A certainly made clear that he is a thief who is involved with others who manufacture fraudulent credit cards using stolen numbers and identifications. He made clear that he is very familiar with the criminal justice system, that he has been an informant in the past, and as he put it, he is no "rookie."

Under the best of circumstances, Person A's credibility is suspect. ■  
[REDACTED]

[REDACTED] It seems reasonable to believe that there was a great deal of [REDACTED] pressure to help Respondent get out of the trouble that he clearly got Respondent into. In sum, I do not accept that Person A is being honest in what he said about Respondent's involvement or lack of involvement in the fraudulent credit card transactions.

It must also be noted that there are other problems in the "Person A" defense. During closing argument, counsel for Respondent pointed to a number of specific places in the transcript where Person A appears to exculpate Respondent. The trouble with this is that he ignored just about everything else Person A said about the transaction with Person A, Respondent, most of which conflict with Respondent's version of events. For instance, Person A told investigators that he and Respondent met at Respondent's mother's house. He said that they left together and went to the Target store in separate vehicles. He said that the plan was for Respondent to help him put the televisions in his van. There is nothing about the DVD player at the heart of Respondent's story about why he went to Target, which was, he said, the only place the two of them could meet.

Person A also said that he told Respondent that he was going to pay for everything because Respondent had come to the store to help him. He said that is why everything was to go on a card he had provided, not, as Respondent said, for Person A to get cash back from him. Person A, by the way, also said that both of the televisions were for him; one for himself and his wife and the other for the kids. He said nothing about Respondent buying one of the televisions from him or stopping at the bank or getting cash from Respondent. In fact, Person A said that after Respondent helped him put both

televisions in his van, Respondent left to go to work and that he later met with his credit card fraud accomplice, Person B, who gave him \$200.

There are other things in the Person A interview that bring into question Respondent's story about the transaction. For instance, he told investigators that the fraudulent cards would not be in his name and, indeed, he indicated that the card used was in some other name. Consequently, Respondent could not have looked at the card and seen Person A's name on it during the transaction at Target. Respondent gave the rather implausible story that he never looked at the name on the credit card he signed for.

Going back to Respondent's version of events, there are still other things that do not make sense related to his claimed relationship with Person A. When discussing the issue of the charge of criminal association, Respondent said that he knew Person A had some kind of criminal record and that because of that he had very limited contact with him, essentially the minimum contact he could have [REDACTED]. He said that at a [REDACTED] gathering he asked generally if anyone had DVD player they could give him and Person A volunteered. The Target store, he said, was just a convenient meeting place so that he could pick up the DVD player. Given that he said he had received the DVD player when they first met at the store (again, we are now dealing with Respondent's version of events) there is no reason for Respondent to have stayed with or met Person A after that.

Respondent said that while he was in Target he decided to buy some athletic clothes. It is clear that this was done in a different part of the store. Again, there is no reason, if Respondent was telling the truth, for him to have met with Person A after the purchase or even to bring the unpaid-for goods back to where Person A was. Further,

there is no question that this was a planned meeting. Person A can be seen waiting around for Respondent's return and Respondent does, in fact, return.

So why meet with Person A again after he received the DVD player? Why sign for the credit card purchase of a person you know has a criminal record? It is just more of what does not make sense in Respondent's scenario. Of course, what does make sense is that Person A offered to let him use a fraudulent credit card to save some or all of the money on his purchases.

No reasonable person could have believed this card was properly obtained or valid. Respondent is found guilty of Specification Nos. 1, 2 and 3.

Specification No. 4 alleges that Respondent, "upon receiving information that the Department was aware of said Police Officer's improper use of and purchase of property, with a wrongfully obtained credit card, did move said property from one location to another in order to conceal its whereabouts or prevent its recovery."

There is no question that Respondent learned that the Department was investigating a fraudulent purchase. This occurred when another officer named Santana informed him that he had been told about such an investigation. Respondent acknowledges that he took the television out of his home and tried to give it to Person A thereby "moving" it as alleged in the specification.<sup>1</sup>

The only question here is why he did this. The specification alleges that he did it to "conceal its whereabouts and prevent recovery." There is no direct evidence of this and it is a conclusion that might be drawn inferentially from his conduct in moving the

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<sup>1</sup> In his statement, Person A did not mention Respondent's having brought the television to him. He did discuss the fact that Respondent came to him to tell him that there was an investigation underway as to the credit card purchases.

television. But there are some problems in drawing this conclusion. The first is that Respondent himself disclosed that he moved the television at his official Department interview. That act of disclosure would certainly tend to negate the inference that he was trying to hide the television or prevent its recovery.

Then, there is the fact that there is another possible motive. However flawed the logic may have been, there is some evidence that Respondent was trying to undo his connection to the crime. At the official Department interview, one of the questioners asked if he had considered returning the television to Target which would have been a better way of rectifying the situation. But the comment recognizes that Respondent seemed to have been trying to take the blame off of himself, by giving the television to the "real" thief.

In any event, the Department has failed to establish that Respondent's motive was to hide the television or prevent its recovery and Respondent is found Not Guilty of Specification No. 4.

Specification No. 5 charges Respondent with criminal association with Person A. Respondent acknowledges that he knew Person A had a criminal history but minimized it by saying it had occurred a long time ago. Respondent, recognizing that this was not a defense, went further and essentially said that he stayed away from Person A except to the extent that, [REDACTED] he inevitably made some contact so he stayed away as much as reasonably possible.

It is impossible to determine what Respondent's relationship with Person A was prior to February 17, 2010, but his relationship with Person A on that day is clear and

close. He arranged to meet him at the Target store and agreed to meet him at the cashier in the electronics section when he was ready to make his purchase. By his own testimony, he accepted a gift card from him.<sup>2</sup> He agreed to swipe and sign for a purchase on a credit card Person A gave him. He left the store with him. All of this is hardly a casual relationship [REDACTED]. Respondent is found Guilty of criminal association under Specification No. 5.

Specification No. 6 alleges that Respondent provided “misleading statements regarding his use and knowledge of a wrongfully obtained credit card.” The Department claims there was some kind of change in Respondent’s story at the interview after he viewed the tape. I could not find such a change and, in any event, we have generally allowed people to correct their story if they are candid after having their memory refreshed.

Respondent, throughout his official Department interview, denied knowledge that the credit card was fraudulent at the time of the purchase, although the details of his explanation may have shifted a bit after he saw the video. In the end, he provided pretty much the same statement about his use of the credit card at the interview that he provided at trial. This statement is more than a mere denial. It is an elaborate tale that has been found to be false (see discussion of Specification Nos. 1, 2 and 3 above). Respondent is, for that reason, found Guilty of Specification No. 6.

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<sup>2</sup> From Person A’s statement we learned that the gift card was one of many Person A had purchased with a fraudulent credit card.

PENALTY

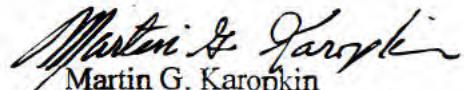
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 7, 2008. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Although not charged as such, what Respondent did in this case is, in effect, a form of larceny. This Department has a longstanding policy of dismissing or otherwise separating from the service officers found guilty at a Departmental trial of Petit Larceny, see for example: Disciplinary Case No. 81810/05 signed 08/08/06, Disciplinary Case No. 79451/03 signed 01/05/06, Disciplinary Case No. 80601/05 signed 10/24/05, and Disciplinary Case No. 79990/04 signed 04/18/05.

The fact that Respondent committed this act of theft through the use of a fraudulent credit card only makes the matter more serious in that it reflects a planned criminal enterprise rather than an impulsive act of shoplifting. Respondent's association with a known criminal, while not in and of itself a termination offense, is at the heart of the problem and his proffered explanation that he did not know the extent of Person A's criminality, even if true, would only serve to underscore the reason for the rule.

Respondent's conduct demonstrates that he cannot be trusted with the responsibilities associated with police work and, therefore, the only recommendation that can be made is that he be DISMISSED from service with this Department.

Respectfully submitted,

  
Martin G. Karopkin  
Deputy Commissioner – Trials

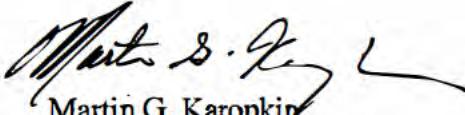
**APPROVED**  
  
FEB 25 2013  
RAYMOND W. KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER ARNALDO SANTANA  
TAX REGISTRY NO. 945397  
DISCIPLINARY CASE NO. 2010-3367

In his last three annual evaluations, Respondent received an overall rating of 3.0 "Competent" in 2011, a 3.0 "Competent" in 2010, and a 3.5 "Competent/Highly Competent" in 2009. [REDACTED]  
[REDACTED] He has no prior formal disciplinary record.

For your consideration.



Martin G. Karopkin  
Deputy Commissioner Trials